

General Information Letter: Home rule municipalities are not exempt from bingo licensing requirements.

April 24, 2008

Dear:

This is in response to your request dated February 28, 2008 for an opinion regarding applicability of the Illinois Bingo License and Tax Act, 230 ILCS 25/1 *et seq.* to a home rule municipality. Your requests states as follows:

Our office represents a home-rule municipality in Illinois seeking to conduct bingo games for senior citizens within its jurisdictional boundaries. It is our belief that pursuant to authority granted by Section 6(a), Article VII of the Illinois Constitution, a home-rule municipality, or one of its subsidiary commissions, possesses the authority to conduct bingo games within its boundaries. Upon a review of the Illinois Bingo License and Tax Act, 230 ILCS 25, *et. seq* ("the Act"), we were unable to find any language pre-empting or limiting such home-rule authority pursuant to Section 6(i), Article VII of the Illinois Constitution or 5 ILCS 70/7 of the Illinois Statute on Statutes. Since the Act seems to apply to non-profit organizations seeking to conduct or host bingo games and not to governmental entities, and since there does not appear to be any language in the Act pre-empting home-rule municipal authority, it is our belief that a home-rule unit of local government need not apply for and obtain a license under the Act to conduct or host bingo within its borders. Our office respectfully requests an opinion confirming that this conclusion and reasoning is accurate, and if not, the reasons justifying a conclusion to the contrary.

RULING

Section 5(a) of the Bingo License and Tax Act (the Act) states:

Any person who conducts or knowingly participates in an unlicensed bingo game commits the offense of gambling in violation of Section 28-1 of the Criminal Code of 1961, as amended.

Section 28-1(b)(5) of the Criminal Code states that the offense of gambling does not include "the game commonly known as 'bingo,' when conducted in accordance with the Bingo License and Tax Act" (720 ILCS 5/28-1(b)(5)).

Article VII, Section 6(a) of the Illinois Constitution states in pertinent part:

Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

This section does not confer upon a home rule municipality authority to conduct bingo without a license as required under the Bingo License and Tax Act. See 1982 Op. Atty. Gen. No. 82-036 (October 22, 1982).

Note, however, that the Act specifically allows a senior citizens organization to conduct bingo without a license or fee, subject to certain conditions. Section 1.3(9) of the Act states:

Senior citizens organizations may conduct bingo without a license or fee, subject to the following conditions:

(A) bingo shall be conducted only at a facility that is owned by a unit of local government to which the corporate authorities have given their approval and that is used to provide social services or a meeting place to senior citizens, or in common areas in multi-unit federally assisted rental housing maintained solely for the elderly and handicapped;

(B) the price paid for a single card shall not exceed 5 cents;

(C) the aggregate retail value of all prizes or merchandise awarded in any one game of bingo shall not exceed \$1;

(D) no person or organization shall participate in the management or operation of bingo under this item (9) if the person or organization would be ineligible for a license under [Section 1.2]; and

(E) no license is required to provide premises for bingo conducted under this item (9).

If bingo is to be conducted outside the conditions set forth in Section 1.3(9), then a license is a required.

Note, in addition, that Section 1.4 of the Act allows a municipality to host bingo without a license. Section 1.4 states:

Providers' license. The Department shall issue a providers' license permitting a person, firm, or corporation to provide premises for the conduct of bingo. No person, firm, or corporation may rent or otherwise provide premises without having first obtained a license. Applications for providers' licenses shall be made in writing in accordance with Department rules. The Department shall license providers of bingo at a nonrefundable annual fee of \$200, or a nonrefundable triennial fee of \$600. Each providers' license is valid for one year from date of issuance, or 3 years from date of issuance for a triennial license, unless extended, suspended, or revoked by Department action before that date. Any extension of a providers' license shall not exceed one year. *A municipality shall not be required to obtain a license to provide such premises.* A provider may receive reasonable expenses for providing premises for conducting bingo. Reasonable expenses shall include only those expenses defined as reasonable by rules promulgated by the Department. (Emphasis added)

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items one through eight of 86 Ill. Adm. Code 1200.110(b). If you have additional questions regarding this GIL, you may contact me at (217) 782-7055.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)